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Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Lodged online: www.aemc.gov.au

**Expiry of the Reliability and Emergency Reserve Trader Rule change proposal:
draft determination**

The Energy Supply Association of Australia (esaa) and the National Generators Forum (NGF) welcome the opportunity to make a submission to the Australian Energy Market Commission's (AEMC) draft determination for the Expiry of the Reliability and Emergency Reserve Trader (RERT) Rule change proposal by the Reliability Panel.

Under the National Electricity Rules the RERT is due to expire on 30 June 2012. The Reliability Panel's Rule change proposal is to extend this by one year to 30 June 2013 and remove its obligation to review the RERT a year prior to its expiry. Under the Commission's draft determination of a 'more preferable Rule',¹ the RERT would be extended for an additional three years until 30 June 2016, with the review obligation also removed.

esaa and the NGF do not support the draft determination, or indeed the Rule change proposal. Instead we consider that the RERT should expire as currently intended on 30 June 2012.

Through a number of submissions to the AEMC and the Reliability panel in recent years we have extensively outlined our reasons why we do not support a RERT in the NEM.² We also note that in recommending that the RERT automatically sunset on 30 June 2016 without prior review, the Commission also shares our view that a RERT should not ultimately be part of the NEM.

¹ At the end of this submission we provide some comments on 'more preferable' Rule determinations in general.

² See for instance: <http://www.aemc.gov.au/Media/docs/NGF%20and%20ESAA-f99dc7e7-2f5c-4815-b015-f215f67503f7-0.PDF>; <http://www.aemc.gov.au/Media/docs/Energy%20Supply%20Association%20of%20Australia-a2ce4d50-c2af-4d6b-9777-708d1d75b33a-0.PDF>; and <http://www.aemc.gov.au/Media/docs/Issues%20Paper%20-%20ESAA-ab3fdb5e-6c60-4343-ad6c-57fba431986-0.PDF>

As such, rather than revisit the arguments for why the RERT should be removed in this submission, we instead direct our comments to what we consider to be the underlying issue in this Rule change process: timing.

Essentially the question the AEMC is grappling with is: when will the time be right to remove the NEM's reserve trading mechanism? The consistent answer to this question has been: later.

Since the NEM began in 1998 with a temporary reserve trading mechanism, the AEMC and its predecessor, the National Electricity Code Administrator, have considered essentially the same question five times (in reviews of the RERT and its predecessor, the Reserve Trader). On each occasion the rule maker's decision was to reaffirm reserve trading as a non-permanent power of the system operator but to extend its expiry date. In 2000 the expiry date was extended by three years; in 2003 by two years; in 2005 by one year; in 2006 by two years; and in 2008 by four years.³

It is clear therefore that while rule makers do not consider that a reserve trader should be a permanent part of the market design, they are nonetheless reluctant to take the final step and remove it. The reason the Commission gives for prolonging the RERT for another four years in its current draft determination is that it:

*"...cannot be certain that there will be sufficient investment to ensure that the reliability standard will be met in all NEM regions over the next several years."*⁴

It therefore seems that the reluctance to remove the RERT relates to an underlying doubt about whether the energy market will achieve one of its key design objectives i.e. delivering reliability. This is despite the favourable evidence to date, with the market consistently delivering the reliability objectives it has been set and the reserve trading capability having never been used.

We agree with the AEMC that meeting the reliability standard is imperative and hence appreciate its reluctance. But we also note that the complex drivers of electricity supply and demand in an energy-only market mean that it is never possible to be "certain" years in advance that there will always be sufficient supply. It is likely that there will always be some factor bearing negatively on the reliability outlook and hence it will always be possible to find reasons to retain the RERT. Our concern though is that if the Commission extends the RERT again now it will merely

³ See Appendix 1 of the Australian Energy Market Operator's submission to the AEMC for the evolution of the reliability safety net: <http://www.aemc.gov.au/Media/docs/AEMO-2e8e6711-6bf6-4584-a9d8-93a6c68b5414-0.pdf>

⁴ An essentially identical reason – uncertainty about whether supply would be sufficient to meet demand – was given in the most recent extension in 2008 when the Commission said: "The Commission agrees with the Panel's analysis and conclusions regarding an ongoing need for a revised version of the current Reserve Trader arrangements, in light of the potential future risks to the supply reliability of the NEM." See National Electricity Amendment (NEM Reliability Settings: Information, Safety Net and Directions) Rule 2008, Final Rule Determination, 26 June 2008, page 32.

perpetuate the pattern of the last five reviews and set the scene for another extension in four years' time.⁵

Given the arguments in favour of removing the RERT and the broad consensus between the energy industry and the Commission that the RERT should not be a permanent part of the market design, we consider that the AEMC should take the opportunity afforded by the current review process and not make the proposed Rule (or its more preferable Rule). This would see the RERT lapse in less than six months' time.

This will be beneficial to the market in its own right. It will also be a powerful statement from the nation's peak energy adviser to other energy policy makers that energy markets can deliver greater reliability and efficiency for consumers. For instance, a demonstration of the AEMC's confidence in the ability of markets to deliver efficient price outcomes will send a signal to state and territory governments that have been unwilling to deregulate retail energy prices, in part due to lingering doubts about the ability of the effective operation of markets. This will be particularly relevant with the AEMC scheduled to review retail competition in New South Wales and Queensland in the coming two years.

A comment on "more preferable" Rule change determinations

In addition to our comments above on the content of the AEMC's draft determination, we would also like to take this opportunity to raise more general concerns with the proposed process.

The AEMC intends to materially alter the proposed Rule change by extending the life of the RERT by an additional three years compared to the Rule change proponent's request. We acknowledge that this intention is consistent with the AEMC's powers under 91A of the National Electricity Law to make a "more preferable" Rule change, which states that:

The AEMC may make a Rule that is different (including materially different) from a market initiated proposed Rule (a *more preferable Rule*) if the AEMC is satisfied that, having regard to the issue or issues that were raised by the market initiated proposed Rule (to which the more preferable Rule relates), the more preferable Rule will or is likely to better contribute to the achievement of the national electricity objective.

As such, we are not questioning the legitimacy of the AEMC's intention and note that as this power is in the Law and not the Rules it is beyond the AEMC's power to change. We nonetheless would like to take this opportunity to register with the AEMC our concerns with the use of this power, which are two-fold.

First, use of this power seems to undermine a policy intent in the development of the National Electricity Law to limit the matters on which the AEMC could initiate a Rule

⁵ Notwithstanding the removal of the review provisions, it will always be possible for any party to propose a Rule change to reinstate the review provision or directly extend the RERT.

change.⁶ This is because the conditions that allow the AEMC to make a more preferable Rule are generous, given that it only requires that it relate to the same issue as the original Rule proposal addressed. As such, the more preferable power could be construed as giving the AEMC de facto capability to initiate Rules.

Secondly, we are concerned that the consultation process is weakened by more preferable Rules that are substantially different to the original proposal to which industry has reacted. We note in this case the Commission has also over-ridden the advice of its own subsidiary Reliability Panel (with its comprehensive consultation requirement). This is a concern given the importance of involving industry's expertise before changes are made to the rules that govern its operation. In this context we note that the AEMC's more preferable powers feature prominently in a number of recent and current Rule change processes with potentially profound impacts on the industry e.g. Scale Efficient Network Extensions and Potential Generator Market Power in the NEM.⁷

Any questions in respect of our submission should be addressed in the first instance to Kieran Donoghue, by email to kieran.donoghue@esaa.com.au or by telephone on (03) 9670 0188.

Yours sincerely



Matthew Warren
esaa Chief Executive Officer



David Bowker
NGF Deputy Chairman

⁶ This is articulated in Section 91(2) of the National Electricity Law, which limits the matters on which the AEMC can make a Rule without a request to correcting minor error in the Rules, making non-material changes or making Rules in respect of any matter that is prescribed by the Regulations as a matter on which it may make a Rule on its own initiative.

⁷ To be clear, we are not making any comment on the content of those Rule changes in this document; we are only drawing attention to process matters.